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QUARLES & BRADY LLP ONE SOUTH CHURCH AVENUE, SUITE 1700 TUCSON, AZ 85701-1621			BROWN, MICHAEL A	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHERYL E. ZEMONT

Appeal 2008-2817
Application 10/612,521
Technology Center 3700

Decided: September 03, 2008

Before TONI R. SCHEINER, DONALD E. ADAMS, and
LORA M. GREEN, *Administrative Patent Judges*.

ADAMS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal under 35 U.S.C. § 134 involves claims 1, 2, 4, 5, 13, 14, 16, 17, 20, and 21, the only claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

INTRODUCTION

The claims are directed to a method for performing a trigger-point massage (claims 1, 2, 4, and 5) and a trigger-point therapy device (claims 13, 14, 17, 16, 17, 20, and 21). Claims 1, 13, and 21 illustrative:

1. A method for performing a trigger-point massage, comprising the following steps:

(a) providing a spherical ball having an array of between 8 to 14 pliable nodes projecting axially from the surface of the spherical ball, wherein said pliable nodes are substantially cylindrical; and

(b) applying localized pressure to a trigger-point using a single pliable node of said spherical ball;

wherein said pliable nodes are between one-half inch to one inch in both length and diameter.

13. A trigger-point therapy device, comprising:

a spherical ball; and

an array of between 8 to 14 pliable nodes projecting axially from the surface of the spherical ball, wherein said pliable nodes are substantially cylindrical and are between one-half inch to one inch in both length and diameter.

21. A trigger-point therapy device, comprising:

a spherical ball; and

an array of 10 pliable nodes projecting axially from the surface of the spherical ball, wherein said pliable nodes are substantially cylindrical, are evenly spaced apart from each other and are disposed upon a rigid pin in press-fit arrangement with said spherical ball, wherein said pliable nodes are between one-half inch to one inch in both length and diameter.

The Examiner relies on the following prior art references to show unpatentability:

Cassidy	US 744,718	Nov. 24, 1903
Mauch	EP 0,320,958	Dec. 15, 1988
Sakai	US 6,013,042	(translated PTO 08-0076) Jan. 11, 2000

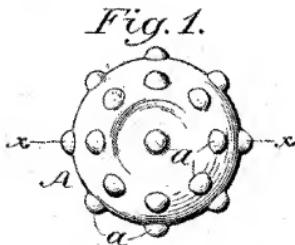
The rejection as presented by the Examiner is as follows:

Claims 1, 2, 4, 5, 13, 14, 16, 17, 20, and 21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Cassidy, Mauch, and Sakai.

We reverse.

FINDINGS OF FACT (FF)

1. Cassidy teaches “an appliance for therapeutical and massage purposes” (Cassidy 1: 12-13).
2. Cassidy’s “device embodies a hollow sphere of flexible material having an undulated surface area” (Cassidy 1: 23-25). For clarity, we reproduce Cassidy’s figure 1 below:



“Figure 1 is an exterior elevation of the device in its preferred form” (Cassidy 1: 30-31).

3. Cassidy teaches a sphere that:

[H]as ranged over its entire surface area, at any desired distance from each other and in any suitable relative arrangement, protuberances *a*, which are formed integral with the body of the sphere and are preferably of semispherical contour, each presenting a convexity raised above the normal surface area of the sphere.

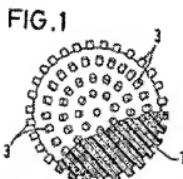
(Cassidy 1: 43-49.)

4. Cassidy teaches that:

In the operation and use of the invention . . . [t]he sphere itself is pressed against the part to be treated and manipulated and rolled around over the surface for any required length of time, the undulations of the surface area of the sphere causing direct contact with all parts of the skin-surface, thus successfully and quickly accomplishing the desired results.

(Cassidy 1: 91-102.)

5. Mauch teaches “a massage device, in particular a device for massaging the reflex zones of the hands” (Mauch 2: 1-2). For clarity, we reproduce Mauch’s figure 1 below:



“Figure 1 is a part-sectioned drawing of a spherical massage ball” (Mauch 4: 23).

6. Mauch teaches that “[t]he acupressure nodules [3] can all have the same size, in which case the massage body has massage characteristics that are uniform across the entire surface of said body. The distribution density,

however, can also vary across the surface" (Mauch 4: 8-10). According to Mauch "[t]he diameter and the spacing of the nodules from one another measures only very few millimeters so that it is possible to massage the reflex zones, which are disposed so as to be relatively closely spaced across the palm of the hand, at several acupressure points" (Mauch 3: 5-8).

7. Mauch teaches that "the nodules have a diameter, height and spacing from one another measuring between 2 and 5 mm" (Mauch 5: 12-13).
8. Sakai teaches a massaging device for feet and legs (Sakai Abstract).
9. Sakai teaches a massaging device wherein the nodes are between 1.5 – 3 cm in diameter (Sakai 4: 19-24).

DISCUSSION

Based of the teachings of the combination of references relied upon the Examiner finds that:

It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the cylindrical nodes having flat ends as taught by Mauch could be substituted for the spherical shaped nodes disclosed by Cassidy in order to use the flat portion of the nodes to massage the trigger-point on the body. The plastic material is a pliable material (resilient) that would allow the user's [sic] to massage the trigger-point without chafing that portion of the skin on the body. The nodes could be constructed to be between one half to one inch in length and diameter as taught by Sakai in order to apply a specific pressure at a specific pressure point.

(Fin. Rej. 2-3.)

Appellant disagrees. According to Appellant "none of the references, alone or in combination, teach or suggest the limitation of 'providing a spherical ball having an array of between 8 and 14

pliable nodes' . . . [or] the claimed length and diameter of the nodes" (App. Br. 6). Appellant asserts that "one of ordinary skill in the art is not taught to produce a ball with the appellant's claimed number and node-size limitations any more so than [sic] any of the other node sizes and numbers disclosed by Sakai" (*id.*).

In response, the Examiner asserts that "[t]here are more than 14 nodes on the ball discloses [sic] by Cassidy. Thus, there is an array on the spherical ball that includes between 8 to 14 nodes" (Ans. 3). This is however, not what is claimed. Claims 1 and 13 require that the spherical ball has "an array of between 8 to 14 pliable nodes" and claim 21 requires "an array of 10 pliable nodes." The Examiner has admitted that Cassidy teaches an array having more than 14 nodes, and fails to identify a teaching in either Mauch or Sakai that makes up for this deficiency.

We recognize the Examiner's assertion that Cassidy "teaches that the nodes can be arranged at any desire [sic] distance from each other" (Ans. 4; FF 3). The question remains, however, what would lead a person of ordinary skill in this art to produce a spherical ball having 10, or between 8-14, pliable nodes? According to Mauch, "[t]he diameter and the spacing of the nodules from one another measures only very few millimeters so that it is possible to massage the reflex zones, which are disposed so as to be relatively closely spaces across the palm of the hand, at several acupressure points" (Mauch 3:7-8, FF 6). The Examiner's reliance on Figure 1 of Mauch illustrates this closely-spaced nodule arrangement (Fin. Rej. 2; FF 5). We recognize that Mauch suggests that "if the size of the massage

body and its acupressure nodules is appropriately dimensioned . . . said massage balls can also be used to massage other parts of the body, in particular the back" (Mauch 7: 16-18). In this regard, however, Mauch teaches that "[t]he shape and the dimensions of the acupressure nodules, however, can correspond to those described in the context of Figure 1" (Mauch 7: 20-21). In sum, the combination of prior art relied upon by the Examiner teaches more than 14 nodules. The Examiner has failed to identify, and we do not find, a teaching or suggestion in any of the combination of references relied upon by the Examiner that would lead a person of ordinary skill in the art to limit the number of nodules to those required by Appellant's claimed invention. As discussed above, at best the teachings of Mauch would suggest that a person of ordinary skill in the art increase the number of nodules taught by Cassidy.

Accordingly, we reverse the rejection of claims 1, 2, 4, 5, 13, 14, 16, 17, 20, and 21 under 35 U.S.C § 103(a) as unpatentable over the combination of Cassidy, Mauch, and Sakai.

CONCLUSION

In summary, we reverse the rejection of record.

REVERSED

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